

plans. BellSouth wholly endorses the Commission's tentative view that this procedural and administrative burden on the introduction of innovative services by the BOCs is contrary to the public interest.⁴⁷ Accordingly, BellSouth agrees that the CEI plan filing requirement must be eliminated.⁴⁸

While the adverse impacts of the CEI plan filing requirement on BOCs' abilities rapidly to introduce new services has been described in the past with anecdotal stories highlighting individual cases,⁴⁹ a recent study introduced by Ameritech in another proceeding presents a

⁴⁷ *Further Notice* at ¶ 63 ("Moreover, the time and effort involved in the preparation and review of the CEI plans may delay the introduction of new information services by the BOCs, without commensurate regulatory benefits. Such a result is contrary to one of the Commission's original purposes in adopting a nonstructural safeguards regime, which was to promote and speed introduction of new information service, benefiting the public by giving them access to innovative new technologies.").

⁴⁸ To be consistent, the Commission also should dismiss all pending CEI filings before it and no longer require services originally offered pursuant to CEI plans (including payphone services) to continue to be offered by the terms of those plans. Similarly, plan amendments should not be required for modifications of previously authorized services. Once the Commission makes the policy determination that CEI plans are unnecessary on a going forward basis, continuing to constrain BOCs' existing service offerings to terms of previous filings would disadvantage those BOCs in comparison to BOCs who have not yet introduced such offerings, but who would later be able to do so free of the limitations of a specifically approved plan.

Separately, the Commission's concern with how the proper regulatory classification of a service (*i.e.*, information service or telecommunications service) might be determined absent a CEI plan review process is not really a CEI issue at all. *All* carriers must be concerned with the proper regulatory classification of their services, and the issue is not unique to BOCs. *Independent Data Communications Manufacturers Association Inc. Petition for Declaratory Ruling that AT&T's Interspan Relay Services is a Basic Service*, 10 FCC Rcd 13717-718 (1995). Several vehicles outside of the CEI plan review process, including complaint proceedings or declaratory rulings, remain available to parties or the Commission for resolving these issues. *See, e.g.*, Telecommunications Resellers Association Petition for Declaratory Ruling, CCB/CPD 98-16 (filed March 5, 1998).

⁴⁹ *See, e.g.*, *Further Notice* at n. 196.

comprehensive review of all CEI filings.⁵⁰ This study confirms that BOC enhanced service plans encounter substantial delay through the regulatory approval process. Indeed, the Ameritech study shows that the *average* delay between the CEI plan filing date and the approval to begin offering the service⁵¹ was over six months.⁵²

“Six month delay” and “rapid introduction” are incompatible terms -- particularly in today’s marketplace -- given the pace at which new technologies and services are moving. Indeed, the only parties’ whose interests are advanced by such delays are those with whose services the BOCs’ enhanced services would compete. These parties thus have the anticompetitive incentive to protract the CEI plan approval process as long as possible. The Commission must eliminate this incentive and opportunity for abuse of the regulatory process and the consequential delay in the introduction of new services by eliminating the CEI plan filing requirement in its entirety.

Moreover, CEI plans are not necessary to guard against alleged incentives or opportunities for access discrimination by BOCs. As the Commission noted in the *Further Notice*, the CEI plan filing requirement was always intended to be an interim measure. Originally, the Commission contemplated that implementation of ONA would supplant the need

⁵⁰ See, Petition of Ameritech Corporation to Remove Barriers to Investment in Advanced Telecommunications Capability (Attachment B), “The Effects of Regulation on the Innovation and Introduction of New Telecommunications Services,” CC Docket No. 98-32 (filed March 5, 1998) (“Ameritech Study”).

⁵¹ It should be noted that the delay in the approval process itself does not include additional days on there front end necessary for CEI plan preparation or the additional days following approval necessary to ramp up a new service offering from a cold start.

⁵² Ameritech Study at 8 (“average was around 190 days”).

for filing and approval of service specific CEI plans. This is because under ONA, ISPs would have the opportunity to request new service capabilities and to pick and choose from among a range of ONA services offered by each of the BOCs. Thus, the assurance of availability of basic services used in BOCs' enhanced services would be satisfied by the more comprehensive range of basic services available under ONA plans.

BellSouth urges the Commission to exercise caution, however, not to base a present decision to eliminate the CEI plan requirement on the safeguards originally established in the ONA proceedings, particularly insofar as the Commission has proposed to modify those requirements.⁵³ To base the elimination of CEI plan requirement on the shifting sands of the ONA requirements could subject the Commission to yet another remand.

Instead, the Commission should firmly base its decision to eliminate CEI plan requirements on the changed circumstances occasioned by the passage of the 1996 Act. As has been discussed above, the ONA and other nonstructural safeguards were introduced, as is all economic regulation, only to operate as surrogates for natural competitive forces. Clearly, when the ONA requirements were first established in the *Computer III Phase I Order* and throughout the ONA plan approval process, the operative presumption was that regulation in the form of safeguards was necessary to fill a void created by the absence of competition in local exchange markets. By establishing the framework and conditions for local competition, however, the 1996 Act has obviated the need for surrogate regulation. Moreover, the actual presence of competing local service providers and the relationships they have established with ISPs confirm that the

⁵³ BellSouth has also shown that the ONA and other special safeguards should be eliminated entirely.

local service marketplace is functioning competitively, as intended. Accordingly, *that* should be the basis for the elimination of CEI plan requirements, not the continuation of a form of ONA safeguards for which there is no longer a need.

B. At A Minimum, The CEI Plan Requirement Should Be Eliminated For Services Offered Pursuant To Stricter Separate Affiliate Requirements

The Commission inquires in the alternative whether, should it not eliminate the CEI plan requirement entirely, it should at least eliminate the requirement for BOCs' enhanced services offered through affiliates established pursuant to statutory separation requirements. BellSouth agrees that the Commission should do so. BellSouth disagrees, however, with the suggestion that other *Computer III* safeguards would continue to apply to a BOC's enhanced service offered through such an affiliate.⁵⁴

The Commission has provided in the *Further Notice* the appropriate rationale to support its proposal to eliminate the CEI plan requirement for services offered through statutory separate affiliates. Specifically, the Commission has noted that the separate affiliate requirements of Sections 272 and 274 of the Act sufficiently address the access discrimination and cost misallocation concerns that formed the basis of the Commission's own *Computer II* separation

⁵⁴ The Commission actually suggests that "applicable" *Computer III* safeguards and ONA safeguards would continue to apply notwithstanding the offering of an enhanced service through a statutory separate affiliate, *Further Notice* at ¶ 68, although neither set of "applicable" safeguards is defined. BellSouth assumes for present purposes, however, at least in regard to the reference to ONA safeguards, that the Commission is alluding to the ONA requirements that the Commission has previously imposed on BOCs irrespective of any structural relief, as those requirements may be modified in this proceeding. As shown previously, those requirements should be eliminated in light of the obligations imposed under Section 251 of the Act. BellSouth's opposition in this context is directed at the suggestion that an undefined set of *Computer III* safeguards would continue to apply to a BOC's offering of enhanced services through a separate affiliate.

requirement. Any CEI filing requirement designed to address those same concerns would be redundant. Additionally, as noted by the Commission, retention of the CEI plan filing requirement under such circumstances would cause unwarranted delay in the availability of the intraLATA component of a planned intra-/interLATA service for which the interLATA component could readily offered without CEI plan approval. The public interest would not be advanced by such a bifurcated service introduction process.

This same rationale also requires rejection of the suggestion that BOCs' intraLATA enhanced services offered through such a separate affiliate without a CEI plan would still remain subject to *Computer III* safeguards. As just noted, the Commission has already observed that the access discrimination and cost misallocation concerns of *Computer II* are adequately addressed by the Section 272 and 274 separate affiliate standards. These are also the same access discrimination and cost misallocation concerns that the *Computer III* safeguards were designed to address through nonstructural means. Moreover, the Commission has previously acknowledged that the requirements of *Computer II* and of *Computer III* are alternative sets of safeguards. One set is not overlaid on the other precisely because they are alternative means of addressing the same regulatory concerns. By the same token, *Computer III* safeguards should not be overlaid on Section 272 or 274 separation requirements. Indeed, such redundant regulation would be directly contrary to the Commission's obligation to reduce or eliminate regulations that are "no longer necessary in the public interest."⁵⁵ Accordingly, the Commission's proposal to retain an undefined set of "applicable" *Computer III* safeguards even to enhanced services offered through separate affiliates should be rejected.

⁵⁵ 47 U.S.C. § 161(a)(2).

VI. THE COMMISSION SHOULD NOT EXTEND TO ISPS THE RIGHTS OF CARRIERS UNDER SECTION 251

Section 251(c) of the Act requires all incumbent LECs to provide to “requesting telecommunications carriers” interconnection and access to unbundled network elements in accordance with the terms of Sections 251 and 252. As the Commission has previously determined, ISPs that do not also provide telecommunication services (“pure ISPs”) are not telecommunications carriers and thus do not have statutory rights to request interconnection or access to unbundled network elements under Section 251(c).⁵⁶ Nevertheless, the Commission has inquired whether it is in the public interest for the Commission through this proceeding to extend “Section 251-type” unbundling rights to pure ISPs. Without a doubt, the Commission should not do so.

Section 251(c) is but a subpart of a comprehensive statutory scheme adopted by Congress to promote competition in local exchange service markets. Within that scheme, the rights granted are balanced against certain obligations. For example, carriers that request interconnection or access to unbundled element pursuant to rights granted in Section 251(c) in order to provide local service in competition with the incumbent also must satisfy the obligations imposed on all local exchange carriers under Section 251(b) as well as the duties of all telecommunications carriers under Section 251(a). In light of this balance of benefits and obligations within Section 251, one must assume that had Congress intended the benefits of Section 251(c) also to be available to non-telecommunications carriers independent of the associated obligations it would not have crafted Section 251 as it did.

⁵⁶

Local Interconnection Order, 11 FCC Rcd at 15990.

Moreover, to grant ISPs certain carrier-like rights without imposing on them carrier-like obligations would only exacerbate the existing inconsistencies in the Commission's treatment of ISPs and carriers. For example, the Commission has indicated it is not reexamining in this proceeding its recent decision to continue not to subject ISPs to interstate access charges.⁵⁷ Yet, the Commission cannot avoid reraising that issue if it attributes even greater carrier-like characteristics to ISPs. Indeed, such piecemeal attribution of carrier-like rights to ISPs will only further blur the distinction (if any is left) between ISPs and carriers and make it impossible for the Commission to explain any continuing disparate application of Title II regulation between these entities.

Finally, there is no need for the Commission to extend Section 251-like rights to ISPs. As discussed above, ISPs can obtain all of the benefits of Section 251 interconnection and unbundling by becoming a telecommunications carrier and assuming the associated obligations, by partnering or teaming with a telecommunications provider who has such rights, or simply by buying the services of a competing local service provider. Indeed, the explosive growth of information services markets indicates that ISPs are in fact obtaining access to the features or services they need. Requiring incumbent LECs to treat ISPs as carriers for purposes of interconnection or unbundling requests simply is not necessary to promote competition in information services markets.

⁵⁷ *Further Notice* at n. 233.

VII. THE COMMISSION SHOULD REJECT ATSI'S REQUEST FOR A BAN ON JOINT MARKETING OF INTRALATA INFORMATION SERVICES

In a holdover from prior proceedings, the Commission solicits comment on one aspect of a petition for reconsideration of the Commission's *BOC Safeguards Order*⁵⁸ filed in 1992 by the Association of Telemessaging Services International ("ATSI"). In its petition, ATSI asks the Commission to reverse its past conclusions that joint marketing of basic and enhanced service offered pursuant to nonstructural safeguards is in the public interest. As BellSouth and others showed previously, ATSI has offered no basis for such a reversal. Accordingly, the Commission should affirm that joint marketing remains in the public interest.

At the outset, it should be noted that ATSI's petition presents something of a procedural anomaly. ATSI originally filed its petition following the *BOC Safeguards Order* in which the Commission had concluded that integration, including joint marketing, of BOC enhanced and basic services pursuant to nonstructural safeguards would serve the public interest. As the petitioning party, the burden was on ATSI to demonstrate that the Commission's previous decision was in error. As parties opposing that petition demonstrated, however, ATSI's petition consisted of little more than a summary reiteration of its earlier filed comments and presented no new argument or evidence that had not already been considered and rejected by the Commission. For this reason alone, the Commission should have dispensed with ATSI's petition.

At this juncture, however, as a result of ATSI's withdrawal of its petition from the docket in which it was filed in exchange for the Bureau's agreeing that the Commission would address

⁵⁸ *Computer III Remand Proceedings: Bell Operating Company Safeguards and Tier 1 Local Exchange Company Safeguards*, 6 FCC Rcd 7571 (1991) ("*BOC Safeguards Order*").

in this proceeding the issues raised in the petition. ATSI's petition has taken on the semblance of a new proposal in a separate rulemaking proceeding. The Commission should be cautious not to let this procedural jockeying by ATSI allow it to evade its obligation to carry the burden of convincing the Commission that any prior decision was improper. Carrying such a burden requires more than simple repetition of previously rejected arguments.

In any event, there is ample evidence to demonstrate that integrated marketing of basic and enhanced services is in the public interest. The analysis contained in BellSouth's original comments in this proceeding and included as Attachment B hereto documents the public benefits of integrated operations, including joint marketing. Indeed, most of these benefits are directly attributable to the integration of sales and marketing functions. Among the benefits identified are the availability of desirable services to customers whose needs were not being met by incumbent service providers, stimulation of the overall market for such services, and increases in customer awareness of and demand for new features and functions from competing sources. Moreover, BOCs were able to provide or stimulate these benefits while achieving for themselves only a small share of the potential market. Finally, economic analysis confirmed that consumer welfare was measurably higher as a result of BOCs' integrated service offerings.

In contrast, there has never been any showing of public benefits to be derived from requiring separation of marketing activities, personnel, or facilities. In fact, the record has consistently shown just the opposite: a prohibition on joint marketing would raise the costs of services and, in some cases, cause them not to be offered at all. As BellSouth's prior comments reflect, a prohibition on joint marketing of voice messaging services would be expected to cause material cost increases in four discrete areas: sales (200+%), advertising (300%), customer

service (40%), and facilities (100%) -- leading to a weighted average per unit cost increase of 176%. Under such circumstances, BellSouth likely would not offer the service in some areas. And even where offered, many customers would likely no longer find it an attractive value. Such a result is clearly not in the public interest.

Finally, even ATSI conceded in its petition that “[j]oint marketing undoubtedly creates efficiencies for the BOCs.”⁵⁹ In contrast, all of the instances of abuse of joint marketing rules alleged by ATSI have been addressed or refuted by the parties and rejected by the Commission. Nonetheless, even to the extent the Commission’s rules permitting integrated operations “may involve any small diminution” in effectiveness against alleged anticompetitive behavior, the Commission has concluded “that the danger of this is outweighed by the benefits of integration.”⁶⁰ Accordingly, the Commission should again reject ATSI’s contention that joint marketing should be prohibited.

CONCLUSION

The time is ripe for the Commission to pen the final chapter in its regulatory policy saga regarding safeguards for BOCs’ enhanced service operations. As shown herein, the Telecommunications Act of 1996 obviates the need for regulatory surrogates for competition. Especially in light of the Act’s unbundling and interconnection requirements that apply to all ILECs, the Commission must discontinue its unjustified, disparate regulation of BOCs’ enhanced services. At a minimum, the Commission must remove the CEI plan filing requirement and other regulatory burdens which serve only to delay rapid introduction of new services.

⁵⁹ ATSI Petition at 6.

⁶⁰ *BOC Safeguards Order*, 6 FCC Rcd at 7622.

Accordingly, BellSouth supports the Commission's initiative in this proceeding as discussed herein.

Respectfully submitted,

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Date: March 27, 1998

Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Computer III Further Remand)
Proceedings: Bell Operating) CC Docket 95-20
Company Provision of)
Enhanced Services)

REPLY COMMENTS

BellSouth Telecommunications, Inc. ("BellSouth"),
hereby responds to comments submitted in the above-
referenced docket.¹

INTRODUCTION

In its Notice,² the Commission solicited input that
would assist it in developing a policy decision on the
proper regulatory framework and associated safeguards for
the former Bell Operating Companies' ("BOCs") participation
in enhanced service markets. Substantial and credible
evidence was provided that a policy permitting integration
of enhanced and basic services, subject to nonstructural
safeguards, generates measurable public benefits.

Conversely, no credible evidence of any quantifiable
public benefit of a separate subsidiary requirement was
offered. Rather, opponents of structural relief, i.e.,

¹ A list of commenting parties and the abbreviations
used herein is included in Attachment A.

² Computer III Further Remand Proceedings: Bell
Operating Company Provision of Enhanced Services, Notice of
Proposed Rulemaking, CC Docket No. 95-20, FCC 95-48 (rel'd
Feb. 21, 1995) ("Notice").

those who have a vested, private interest in the BOCs being hamstrung by unnecessary regulation, were left to resort to misrepresentation, innuendo, and hearsay.

The bottom line, as the comments indicate, is that the Commission's policy permitting structural integration has allowed millions of consumers to obtain services that otherwise were unavailable to them, while competition in those and all enhanced service markets has continued to thrive. On the basis of this record, the Commission has little choice but again to adopt a policy favoring structural integration of the BOCs' enhanced service operations.

I. A Wealth of Evidence Demonstrates Substantial Public Benefits of Vertical Integration.

As BellSouth observed in its Comments, the Notice sent a clear indication that the Commission would rely in this proceeding on demonstrable evidence and experience, rather than hyperbole and hysteria. In response to this indication, the BOCs have presented a wealth of objective and quantifiable data based on current experience, both of the BOCs individually and of enhanced service markets more globally. In contrast, opponents of structural relief have again hidden behind their traditional doom and gloom predictions and have practically ignored that their own industry has grown at explosive rates under the very policies they criticize. The record is clear that vertical

integration of enhanced and basic service affects the public interest beneficially.

Whether presented in number of customers,³ revenues,⁴ growth rates,⁵ consumer welfare,⁶ or any other measure,⁷ the data lead to the inescapable conclusion that the public has benefitted substantially under the Commission's Computer III policies. It is well established that millions of individuals are now taking advantage of the opportunities presented by integrated voice messaging services.⁸ Moreover, these services are available as a choice to tens of millions more customers, leading to continued innovation and improvement in competing sources of such services, such

³ See, e.g., NYNEX at 20, 25; Bell Atlantic at 5, 10-11; US West at 12; SBC at 3, 13; Pacific at 16-17; BellSouth at 52-53.

⁴ See, e.g., NYNEX at 20; Bell Atlantic at n.7, n.9, 8, 12; US West at 12; Ameritech at 3-4, 6; SBC at 7, 11-12; Pacific at 7, 9; BellSouth at 56, n.69.

⁵ See, e.g., NYNEX at 20-21, 25; Bell Atlantic at 8; US West at 12; Ameritech at 3; SBC at 8-9, 11-12; Pacific at 7-48.

⁶ See, e.g., Hausman and Tardiff study appended to each of the BOCs' comments, passim.

⁷ See, e.g., NYNEX at 26 (substantial price decreases); Bell Atlantic at 7 (creation of new markets), 8-9 (price decreases); US West at 12 (increased sales by competitors due to BOC's advertising of its own service); SBC at 10-26 (substantial competition and competitors in all market segments); Pacific at 18 (packaging of new and lower-priced service options); BellSouth at 53 (rapid penetration growth showing previously existing, but unmet, demand for new services), 55 (new feature development in CPE based alternatives).

⁸ See note 3, supra.

as CPE, and maintaining downward pressure on prices of those alternatives.⁹ Thus, even customers who do not buy the BOCs' services realize appreciable benefits from the Commission's policies.

Moreover, the benefits to consumers have not been gained at the expense of a competitively functioning marketplace. To the contrary, the marketplace has not only remained competitive across enhanced service segments, but has been among the fastest growing sectors of the national economy.¹⁰

That much of this growth has occurred with only nominal participation by the BOCs in certain market sectors is hardly damning criticism of the Commission's policies. In fact, such results prove the effectiveness of both prongs of the Commission's ONA initiative,¹¹ rather than undermine it. That the BOCs have not parlayed structural relief into a position of market dominance, as opponents of structural relief routinely have asserted the BOCs would do, validates the Commission's rejection of those assertions and the Commission's reliance on nonstructural requirements as

⁹ See BellSouth at 54-56.

¹⁰ See note 5, supra.

¹¹ In its Comments, BellSouth encouraged the Commission to maintain its perspective that distinguishes between those safeguards designed to ensure BOCs participating in enhanced service markets do so in a nondiscriminatory manner and other requirements designed to foster service development opportunities for all enhanced service providers. BellSouth at 8-11.

effective safeguards against such results. That the marketplace has nonetheless grown at double digit rates confirms that nonaffiliated ESPs are obtaining network services to provide the enhanced services demanded by the consuming public.

Indeed, as the Hausman and Tardiff study appended to each of the BOCs' comments demonstrates, if the opportunity for BOC participation in enhanced service markets had undermined competition, output would be expected to fall and prices to rise as BOCs came to dominate the market.¹² As has been shown, just the opposite has occurred. Prices have fallen, the variety and volume of available services has grown dramatically, and service providers of all sizes have thrived in this competitive environment.

In contrast with these tangible, measurable benefits to the consuming public that derive from a policy of structural relief, the only "benefits" articulated by opponents of such relief are not public benefits at all. Rather, the benefits would inure solely to the proponents of structural separation who would gain the satisfaction of effectively precluding a potential competitor from entering the market. The Commission should not be led to substitute that measure of benefit as the yardstick by which to measure public benefit.

¹² Hausman and Tardiff at n.6.

Significantly, the two parties whose responsibility it is to view issues raised in the Notice from the same public interest perspective as the Commission agreed that structural separation imposes substantial costs on the public. As New York observed:

[R]equiring separate subsidiaries may result in customer confusion or inconvenience associated with the loss of branding and one-stop shopping, a reduction of potential synergistic savings, and the creation of additional costs that are ultimately borne by the consumer.

. . . .

A general requirement of separate subsidiaries for all enhanced services would result in inefficiencies and over-regulation for many potentially beneficial customer services. In sum, it is contradictory to attempt to foster industry creativity and diversity by establishing an inflexible policy requiring separate subsidiaries.¹³

Wisconsin expressed similar views about the detrimental public interest consequences of structural separation:

Structural separation would impose substantial additional costs without commensurate benefit. Structural safeguards would require changes in service delivery, such as separate staffs, that would be both inconvenient and confusing to final customers. Structural safeguards would also foreclose the opportunity to achieve economies of scale and scope which would ultimately benefit all consumers. In short,

¹³ New York at 2, 5. While New York also advocates that states should retain the authority to impose separate subsidiary requirements on a case-by-case basis, the Commission's preemption of such authority based on a federal policy of structural integration was expressly upheld by the Ninth Circuit. California v. FCC, 39 F.3d 919 (9th Cir. 1994), cert. denied, ___ U.S. ___ (April 3, 1995).

[Wisconsin] believes the reimposition of structural safeguards would be a step backwards in regulation and impede achievement of market efficiency.¹⁴

In short, the record is replete with evidence of actual and substantial public benefits of structural relief. These public benefits far outweigh the private benefits the BOCs' competitors would reap under structural separation. Moreover, as shown below, the purported costs of structural relief do not withstand even minimal scrutiny and thus do nothing to undermine the public benefits that are to be achieved. Structural relief clearly is in the public interest.

¹⁴ Wisconsin at 6. Wisconsin also implicitly concurs in BellSouth's observation, BellSouth at 9-13, that questions concerning the appropriate model of ONA or degree of unbundling are not inherently related to issues of structural integration and safeguards against discrimination:

ONA is intended to provide nondiscriminatory access to network services. It should not be the impetus for reimposition of structural separation requirements simply because the model of ONA adopted is more limited than that envisioned in the original Computer III decision. . . . The primary need is that competitors must have nondiscriminatory access to all elements or services that LECs use in their provision of enhanced services.

Wisconsin at 8.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Computer III Further Remand
Proceedings: Bell Operating
Company Provision of Enhanced
Services

CC Docket No. 95-20

COMMENTS

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IV. The Net Benefits of Structural Relief Outweigh Any Benefits of Separate Subsidiaries

A. Experience And Market Data Demonstrate The Benefits Of Structural Relief.

Since the Commission initiated its inquiry into the relative costs and benefits of structural relief versus those of structural separation requirements in the Computer III proceeding, the benefits side of the equation has never been much in doubt. The history of that proceeding is replete with examples of benefits to the American public that could be brought about by more efficient, integrated operations of the BOCs' enhanced service activities. In contrast, it has been the adequacy of the safeguards imposed on such integrated operations that has been the more difficult issue with which to contend. As shown above, however, the case can clearly be made that the Commission's existing ONA safeguards adequately protect against access discrimination concerns. As shown below, the evidence of the benefits of structural relief is even more compelling now than it was at the time of the Commission's past considerations of this issue.

There are three aspects of the benefits analysis that are significant in this review. First is the evidence of the direct impact structural relief has had on the BOCs' ability to provide services in previously underserved markets. The second important aspect is the degree to which the BOCs' participation in particular markets has provided

secondary benefits both to consumers in those markets and to the economy as a whole. The third important aspect of this review is that all of these benefits have been brought to bear with no negative impact on other competitors in the marketplace. In fact, the evidence demonstrates that the enhanced service industry continues to be one of the most robust segments of the American economy.⁶¹

The history of the BOCs' participation in underserved markets is well chronicled. Prior to the Computer III proceeding, the Commission had denied AT&T's request for authority to offer voice messaging type services integrated with its network service offerings, based on the Commission's expectation that other providers would fill the existing void for residential voice messaging services.⁶² As history shows, the Commission's expectation was never fulfilled and the mass market for residential voice messaging services went largely unmet.

In contrast, since the BOCs began offering network based voice messaging services pursuant to CEI plans, over five million customers are now being served. In BellSouth's region alone, subscribership has grown from a base of zero in early 1989 to nearly 1.3 million subscribers in January

⁶¹ U.S. Industrial Outlook 1994, U.S. Department of Commerce, 25-1.

⁶² American Telephone and Telegraph Company Petition for Waiver of Section 64.702 of the Commission's Rules and Regulations, 88 FCC2d 1 (1981).

of this year. Of those, approximately 96% are residential customers.

That there was an existing but unmet need for mass market voice messaging services is confirmed by the rapid growth in BellSouth's penetration rate⁶³ for its MemoryCall service. In only six years of availability, MemoryCall service's penetration is 10.1%. In comparison, only four of the eighteen vertical services offered by BellSouth to residential customers have higher penetrations. And, of those four, only one, CLASS Call Return (16.4% penetration) was introduced within the last ten years. The remaining three, Touchtone (66%), Call Waiting (55.4%), and Three Way Calling (11.1%), have been available for much longer. The rapid rise of MemoryCall service to the top of the penetration charts demonstrates the desirability of network based voice messaging services.

Additionally, this growth has not come at the expense of incumbent telemessaging service providers. Rather, the primary competition for residential voice messaging service is the home answering machine. Indeed, evidence in the Georgia MemoryCall proceeding indicated that less than two percent of the incumbents' then existing customer base were residential subscribers when BellSouth first introduced

⁶³ Penetration rate is the percentage of customers to whom a service is available who have subscribed to the service. Rates shown are for residential customers only.

MemoryCall service.⁶⁴ In contrast, approximately 28% of residential phone customers had answering machines. Thus, the introduction of network based voice messaging services for mass market residential customers responded to a need that was not being met by incumbent service providers.

In addition to the direct benefit to individual subscribers of the BOCs' voice messaging services, the evidence indicates that more widespread benefits are also being realized. Consumer knowledge and demand have been greatly stimulated by the availability of BOC voice messaging services, both those of BellSouth as well as those of other LECs nationwide. Industry experts have projected that growth in the overall voice messaging industry will continue to be spurred in large part by the BOCs' impetus in residential subscriber growth. By 1999, voice messaging service subscribership is predicted by some analysts to exceed 22.7 million mailboxes.⁶⁵

Increasing consumer awareness in the residential voice messaging market has also resulted in increasing demand for new features and new functions. Manufacturers of telephone answering devices have introduced a wide array of new features including digital recording and playback media, and feature integration including caller ID, multiple mailboxes,

⁶⁴ See Georgia MemoryCall, Hearing Transcript at 269, 387.

⁶⁵ Frost & Sullivan/Market Intelligence, Voice Messaging Service Markets, at 3-7 (1993).

name and number logging, time and date stamping, and call blocking capabilities in response to this demand. Along with this added functionality, the price for telephone answering machines has continued to drop while improved customer service options such as 800 number "help lines" and extended warranty availability are being offered by a number of major vendors.

As a result of these developments, the market place for residential voice messaging services has remained extremely competitive. At the same time that the BOCs were expanding their voice messaging offerings, the answering machine market continued to show steady growth. In fact, the sales of answering machines in the United States have continued to climb from about \$838 million in 1989 to about \$1.1 billion in 1994.⁶⁶ That this market remains intensely competitive is also evidenced by BellSouth's estimate that in its region alone telephone answering machine home penetration rates reached 61% by year end 1994. This compares consistently with estimates of nationwide average penetration rates of 28% in 1989 to 66% in 1994.⁶⁷

This burgeoning demand for customer control of messaging capabilities continues to drive market innovation. New personal computer plug-in boards offer both business and

⁶⁶ Yankee Group, YankeeVision Consumer Communications White Paper, "Voice Messaging Services vs. The Answering Machine", Vol. 12, No. 1, at 4 (Jan. 1995).

⁶⁷ Id.

residential customers enhanced personalized voice mail capabilities for around \$200.00. Cellular and paging message service enhancements continue to be introduced almost weekly, while new technologies and increasing demand promise a wide array of voice-to-text, text-to-voice, and possibly even automatic foreign language translation service features as part of future voice messaging service options.

In short, BOC participation in the voice messaging service market has both directly provided and indirectly stimulated voice messaging service options that had failed to materialize under prior separate subsidiary requirements. Significantly, the BOCs have provided or stimulated these benefits while achieving only a very small share of the potential market.⁴ This result is in stark contrast to the dire predictions that surfaced in the Commission's past reviews of structural relief that the BOCs would effectively dominate and squelch competition in the markets they chose to enter.⁵ Those predictions have now been shown to be way

⁴ See, e.g., Hausman and Tardiff, Benefits and Costs of Vertical Integration of Basic and Enhanced Telecommunications Services, at 10 ("Hausman and Tardiff"), included herewith as Appendix A.

⁵ The absence of detrimental impact on competition in other enhanced service markets BOCs have entered is also evident by the explosive growth in those markets. As Hausman and Tardiff recount:

Value added network (VAN) services have grown from \$0.5 billion in 1989 to \$3.4 billion in 1993. Subscriberhip to all video text gateways increased from 715,000 to 6.3

(continued...)